IN THE HIGHCOURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6879 OF 2006

Sau.Sushiladevi Pannalal Goyal
.. Petitioner
V/s.
Sham Gandhi Construction Co. ..
Respondent.

Shri.P.P.Goyal for the petitioner.
Shri.H.P.Vyas for the respondent.

CORAM : A.P.DESHPANDE,J.
DATED : 13th November, 2006.

P.C.

The petitioner questions the correctness of the order dated 24/08/2006 passed by 6th Ad-hoc Additional District Judge, Pune rejecting Miscellaneous Application No.587 of 2006. The respondent had instituted a suit for recovery of Rs.81,000/- against the petitioner. The petitioner was a tenant and he had surrendered the tenancy and agreed to purchase a shop from the plaintiff for a consideration of Rs.81,000/- in the new building which was to be constructed after demolition of the old building. The petitioner had also issued a cheque in the sum of Rs.81,000/- but later on stopped the payment. The respondent instituted a suit for recovery of Rs.81,000/- and in the said suit, the petitioner contended that he had

purchased a shop admeasuring 540 sq.ft.. but the respondent gave possession of a smaller flat admeasuring 460 sq.ft. The Trial Court, the 1st Appellate Court so also this Hon'ble Court in second appeal has held that the petitioner failed to prove that he was to get a shop admeasuring 540 sq.ft. and thus decree was confirmed in second appeal.

Aggrieved thereby, the petitioner approached the Supreme Court and the Supreme Court was pleased to dismiss the writ petition as it did not find any merit in the same. The Supreme Court observed thus : -

"We wish to express no opinion in the matter and it will be open for the petitioner to re-agitate the matter in a duly constituted proceedings before the appropriate forum in accordance with law."

Reading the said observations, the petitioner moved the review petition before the District Judge. The said review petition came to

be dismissed. The petitioner did not challenged the said order whereas again made an application bearing Miscellaneous Application No.587 of 2006 and contended that the proceedings of the 1st Appellate Court need to be reopened in view of the above referred observations by the Supreme Court. The 1st Appellate Court not being impressed by the said submissions rejected the application. It is also observed that elaborate reasons are spelt out in the order passed by the 1st Appellate Court rejecting the review application.

In my consider view of the matter, the observations reproduced herein above made by the Supreme Court cannot be construed so as to direct the 1st Appellate Court to reopen the first appeal by allowing the review had that been the intention of the Supreme Court, it would have set aside the order passed in second appeal, for the obvious reason that the order passed in first appeal merge in the order passed in second appeal. I do not find any illegality in the impugned order and hence the writ petition is summarily dismissed.

(A.P.DESHPANDE,J)